



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Dear [REDACTED]:

This responds to your letter, dated August 4, 2000, requesting exemption from the tax treatment of agency drivers who use agency provided vehicles for commuting.

Under the provisions of section 61(a)(1) of the Internal Revenue Code (the Code), gross income includes compensation for services, including fringe benefits, except as otherwise provided by law.

All ordinary and necessary business expenses paid or incurred during the tax year are deductible under Section 162(a) of the Code. However, the costs of commuting between the Taxpayer's residence and the Taxpayer's workplace are generally nondeductible expenses under Sections 1.162-2(e) and 1.262-1(b)(5) of the Income Tax Regulations.

Although the value of an employer-provided vehicle used for commuting purposes must generally be included in income, section 132 of the Code and the regulations thereunder, do provide for exclusions in the case of qualified nonpersonal use vehicles. Section 1.132-5(h) of the regulations provides that 100 percent of the value of the use of a "qualified nonpersonal vehicle" is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in, section 1.274-5T(k), paragraph (k)(3) through (8), of the regulations, the use of the vehicle conforms to the requirements of that paragraph.

Section 274(i) defines a "qualified nonpersonal use vehicle" as any vehicle which, by reason of its nature, is not likely to be used more than a de minimis amount for personal purposes. Under this section, passenger automobiles such as sedans are not exempt from taxation because their design is such that they can easily be used for personal purposes. Section 1.274-5T(k)(7) of the regulations generally provides that a pickup truck or van is not tax exempt unless it has been specially modified with the result that it is not likely to be used more than a de minimis amount for personal purposes.

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Rev. Rul 86-97, 1986-2 C.B. 42 sets forth the Service's position on the application of the qualified nonpersonal use vehicle test to specially modified pickup trucks and vans, and applies to all employers including governmental units or any agency or instrumentality thereof. [Copy enclosed] There is no exemption for state and local government entities.

I hope this information will be useful to you. If you have further questions concerning this matter, please contact me or Robyn Mathis of my staff at (202) 622-6040.

Sincerely,

Marie Cashman
Senior Technician Reviewer
Employment Tax Branch
Tax Exempt and Government Entities
Office of Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

Enclosure